

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re: )  
 )  
JESSE LUCIANO LOPEZ, ) Bankruptcy No. 24-26705  
 ) Chapter 13  
Debtor. )  
----- )

BEFORE THE HONORABLE JOEL T. MARKER

January 14, 2025

APPEARANCES OF COUNSEL:

For Auntie Tut Trust:     Jeremy C. Sink  
                                  Attorney at Law  
                                  Kirton McConkie  
                                  36 South State Street  
                                  Salt Lake City, Utah 84111

For Chapter 13  
Trustee:                     Katherine Kang  
                                  Attorney at Law  
                                  U.S. Trustee's Office  
                                  405 S. Main Street  
                                  Suite 300  
                                  Salt Lake City, Utah 84111

Court Reporter:

                  Laura W. Robinson, FCRR, RPR, CSR  
                          351 South West Temple  
                          3.303 U.S. Courthouse  
                          Salt Lake City, Utah 84101  
                          (801)201-9731

**Salt Lake City, Utah**

**January 14, 2025**

\* \* \* \* \*

THE COURT: Good afternoon. We've got one matter on the 2:00 calendar in the Chapter 13 case of Lorenzo Lopez, Case No. 24-26705. Could I get appearances please starting with the movant?

MR. SINK: Your Honor, Jeremy Sink of Kirton McConkie on behalf of creditor Auntie Tut Trust.

THE COURT: Thank you. I'll note for the record Mr. Lopez filed his Chapter 13 petition without the assistance of an attorney and he is not making an appearance at this hearing.

Go ahead, Mr. Sink.

MR. SINK: Your Honor, this is the time and place set for hearing Auntie Tut's motion for dismissal of this case and for in rem relief for relief from the automatic stay from subsequent bankruptcy filings related to the piece of property that Auntie Tut Trust has a lien against.

We've -- I think our pleadings speak pretty plainly as to what has occurred here. As you know, this is the third bankruptcy that has been filed essentially hours before three consecutive foreclosure sales that my client has attempted to consummate related to this property.

1 And the disturbing part of this current  
2 bankruptcy is noted in our pleadings where the  
3 obligor on this note appears to have been the one who  
4 hand-delivered the petition to the bankruptcy court  
5 for the filing of this immediate case. We're not  
6 sure if Lorenzo Luciano Lopez even exists. But, the  
7 pattern has been shown.

8 We filed a notice of default, we notice up a  
9 trustee's sale, and then on the eve of that trustee's  
10 sale the bankruptcy is filed. And under none of  
11 those three bankruptcy cases has there been any  
12 attempt to seek refuge under the Bankruptcy Code. No  
13 attempt to file statements and schedules. No attempt  
14 to attend a 341 Meeting. No attempt to essentially  
15 propose a Plan of Reorganization.

16 In the immediate case in response to us  
17 filing this motion, as you have seen, a motion to  
18 dismiss the case was filed. And we don't have any  
19 problems with that motion to dismiss but we think  
20 that this court has jurisdiction to enter -- to grant  
21 our motion before dismissing this case under Section  
22 1307 of the Bankruptcy Code.

23 We believe that the proof is in the pudding  
24 here especially given the fact that although a  
25 pleading was filed, no debtor appeared today. Again,

1 I have my suspicions that that debtor doesn't exist.  
2 I provided to the court a recording of the  
3 conversation between me and Mr. Darger at the  
4 foreclosure sale at the beginning of this bankruptcy.  
5 There was no Mr. Lopez there. He kept referring me  
6 to Mr. Lopez as if he did exist, but he is the one  
7 who was there and referenced the e-mail that was  
8 allegedly from Mr. Lopez. He wasn't copied on that  
9 e-mail. I gave you a copy of that e-mail. All  
10 indications are that this bankruptcy was filed by  
11 Mr. Darger for the sole purpose of thwarting our  
12 collection efforts.

13 We believe that an in rem order is  
14 appropriate as to the property prohibiting the -- or  
15 essentially making any subsequent bankruptcies not  
16 subject to the automatic stay as to this particular  
17 piece of property.

18 We think the court can do that. I have  
19 provided two courts in my reply memorandum that I  
20 filed today after their objection. Those two courts  
21 are the *In re: Roben* case and another case cited  
22 there. We believe this court does have authority  
23 under both Section 362 and Section 105 to enter an in  
24 rem order granting us that relief.

25 We believe that the -- what the court did in

1 the *In re: Roben* case is appropriate. And that is  
2 that once the in rem order is entered, then I would  
3 be responsible for recording that order with the Salt  
4 Lake County Recorder's Office so as to give any  
5 subsequent owners of the property notice of this  
6 order that we think is appropriate to be entered.

7 And if the court doesn't have any questions  
8 for me, I would submit the rest on the pleadings.

9 THE COURT: Thank you. I see we have an  
10 appearance by counsel for the Chapter 13 Trustee.  
11 Ms. Kang, do you have anything you wish to say?

12 MS. KANG: No, Your Honor. We don't have  
13 any -- none of the schedules or any of the documents  
14 relating to petition have been filed or have been  
15 provided to us so we don't know what's going on in  
16 this particular case. So with that, that's all I  
17 have to contribute, Your Honor.

18 THE COURT: Thank you. All right. I'll  
19 note at the outset that on a motion for relief under  
20 Section 362(d) of the Bankruptcy Code, Section 362(g)  
21 provides that at any hearing on a motion for relief  
22 under 362(d) the party requesting such relief has a  
23 burden of proof on the issue of the debtor's equity  
24 in the property which is not an issue in this case.

25 And two, the party opposing such relief has

1 a burden of proof on all other issues.

2 Mr. Lopez, again, has not appeared at this  
3 hearing --

4 MR. DARGER: I am here, Your Honor. My name  
5 is John Darger and I'm a third-party and I filed -- I  
6 would like you to grant for me to intervene. I filed  
7 papers to intervene.

8 THE COURT: I'm sorry, Mr. Darger, you're  
9 not the debtor in this case, correct?

10 MR. DARGER: I have an interest in the  
11 property, Your Honor.

12 THE COURT: All right. You're not the  
13 debtor in this case and you're not an attorney.

14 MR. DARGER: I'm not a third-party and I  
15 filed papers that you will be able to pull up and  
16 see.

17 THE COURT: All right. Well, we'll note  
18 Mr. Darger's appearance today. As I was saying, the  
19 debtor has the burden of proof on all other issues  
20 and Mr. Lopez is not here to offer any evidence in  
21 support of his objection to the motion.

22 So the matter before me is a motion to  
23 dismiss and proposed bankruptcy relief from stay  
24 filed by secured creditor Auntie Tut Trust. This  
25 case, and I'll take judicial notice of Mr. Darger's

1 prior two cases that I'll describe in a minute, this  
2 case is a third in a series of Chapter 13 cases filed  
3 over the past 12 months involving real property  
4 located at 13887 South Lamont Lowell Circle in  
5 Herriman, Utah.

6 The first case, case number 24-20354, was  
7 filed by Jonathan Darger on January 29th, 2024, and  
8 was dismissed on April 9th, after Mr. Darger failed  
9 to file any of the required documents by the court  
10 extended deadline of April 5th. Apart from a list of  
11 creditors and a Schedule A/B that listed a potential  
12 \$1 million wrongful foreclosure slash fraud claim  
13 against the movant Auntie Tut Trust but no real  
14 property owned by Mr. Darger.

15 Mr. Darger filed a second case on June 4th  
16 of 2024, 24-22721, that largely mirrored the first  
17 case. He again filed only a list of creditors and  
18 the same Schedule A/B and that case was dismissed on  
19 July 25th of 2024 for Mr. Darger's failure to timely  
20 file any other required documents.

21 Then, since no stay would go into effect if  
22 Mr. Darger filed a third case before January 30th of  
23 this year, 2025, instead Mr. Lopez filed the present  
24 case 24-26705 about 30 minutes after being  
25 quitclaimed the joint interest in the property.



1 In this case, Mr. Lopez didn't even bother  
2 to file a list of creditors which was due by  
3 January 2nd per Federal Bankruptcy Procedure  
4 1007(a)(1), and Local Rule 1007-1(b), the latter of  
5 which also permits the court to dismiss the case sua  
6 sponte if the deadline isn't met.

7 Mr. Lopez also didn't file any of the other  
8 documents listed in the court's December 31st  
9 deficiency notice. Those were due yesterday  
10 January 13th. The running theme in all three cases,  
11 each of which was filed on the day before a  
12 foreclosure sale of the Herriman property, is  
13 Mr. Darger's dispute with Auntie Tut which he accuses  
14 of malicious and fraudulent conduct to steal the  
15 equity in his house largely by calculating balance  
16 due based on compound or default interest rather than  
17 simple interest.

18 As indicated in the exhibits attached to the  
19 movant's motion, this saga began with a 5-year  
20 \$320,000 note executed by Mr. Darger and Auntie Tut  
21 in July of 2013 accompanied by a Deed of Trust for  
22 the Herriman property.

23 Mr. Darger then transferred the property by  
24 a warranty deed to Ultimate Estates, LLC, in August  
25 of 2013. Ultimate Estates, through Mr. Darger as

1 owner, transferred the property by warranty deed to  
2 Ultimate Enterprise, LLC, in October of 2018 and  
3 Ultimate Enterprise, through Mr. Darger as manager,  
4 quitclaimed its interest to both itself and Mr. Lopez  
5 on December 30th of 2024 about 30 minutes before this  
6 Chapter 13 case was filed.

7 Mr. Lopez sent an e-mail to Auntie Tut's  
8 counsel, Mr. Sink, on December 31st at about  
9 30 minutes before the foreclosure sale with an odd  
10 request for the post-petition mortgage payment amount  
11 which echoed a similar e-mail from Mr. Darger to  
12 Mr. Sink in June, although Mr. Lopez has no liability  
13 on the note. Only Mr. Darger and his wife attended  
14 the foreclosure sale which Mr. Sink postponed to  
15 January 24th, 2025, in accordance with Utah Code  
16 57-1-27(2)(c) and Mr. Darger apparently declined to  
17 discuss his connection with Mr. Lopez at the sale.

18 And Mr. Darger, who hand delivered  
19 Mr. Lopez's bankruptcy petition and accompanying  
20 documents for filing with the court, holds himself  
21 out to be a foreclosure prevention specialist in his  
22 LinkedIn profile.

23 Although the motion filed by Auntie Tut is  
24 styled as both as a motion to dismiss and motion for  
25 stay relief, the stay relief request makes up the

1 bulk of the argument. Auntie Tut asked for both  
2 regular stay relief under Section 362(d)(1) for  
3 cause, and also for relief under Section 362(d)(4)(B)  
4 based on a scheme to delay, hinder, or defraud  
5 creditors that involves multiple bankruptcy filings  
6 affecting such real property. Which if granted,  
7 functions as in rem relief against the property for  
8 two years upon proper recording of the court's order.

9 A stay relief motion is a summary  
10 proceeding. So at a stay hearing, the court merely  
11 determines whether the movant has a colorable claim  
12 that is a facially valid security interest. It then  
13 should consider whether the objector has raised a  
14 colorable defense that is not -- that not merely  
15 offsets the movant's claim, but actually would defeat  
16 the movant's claim.

17 In this context the bankruptcy court limits  
18 its consideration of defenses to those that strike at  
19 the heart of the creditor's lien, or that bear on the  
20 debtor's equity in the property. And I am referring  
21 to the *Utah Aircraft Alliance* case from Judge Thurman  
22 reported at 342 B.R. 327. That's from the Tenth  
23 Circuit Bankruptcy Appellate Panel, excuse me, 2006.

24 Just before the clerk's office closed  
25 yesterday evening, Mr. Lopez filed a motion and

1 proposed order dismissing the case, and an objection  
2 to Auntie Tut's motion that raises four arguments.

3 One, the court must dismiss the case  
4 immediately under Section 1307(b) before ruling on  
5 Auntie Tut's motion. Two, the court must abstain in  
6 favor of the state court's deciding a mortgage  
7 dispute. Three, a request for in rem relief requires  
8 an adversary proceeding, according to Mr. Lopez. And  
9 four, Auntie Tut's own conduct regarding mortgage  
10 negates any finding of a scheme to hinder, delay, or  
11 defraud.

12 And Auntie Tut filed a reply several hours  
13 ago. None of Mr. Lopez's arguments are well taken.  
14 Here, it's clear from the record of all three cases  
15 that the only purpose for the case is for us to stop  
16 the foreclosure sales by Auntie Tut. Almost no  
17 required documents were filed in any of the cases,  
18 and no meaningful efforts were undertaken to  
19 legitimately prosecute any of the cases.

20 Mr. Lopez's argument that Auntie Tut --  
21 Auntie Tut's prompt filing of the motion somehow  
22 prevented Mr. Lopez from filing required documents is  
23 frivolous and it echoes similar arguments from  
24 Mr. Darger in his prior cases as to why he couldn't  
25 timely file his own required documents.

1 All three cases were filed on the eve of  
2 foreclosure, and Mr. Lopez was a legal stranger to  
3 the property until receiving a quitclaimed interest  
4 about 30 minutes before he filed his Chapter 13 case  
5 which was designed again to get around the fact that  
6 Mr. Darger had already exhausted his two automatic  
7 stays within the 12-month period under Section  
8 362(c), even though he scheduled no real property in  
9 either of his cases, having long ago transferred  
10 ownership of the Herriman property from himself to  
11 Ultimate Estates and then Ultimate Enterprise.

12 The note matured in 2018 but remains unpaid,  
13 and no payments of any kind have been made since  
14 January of 2023. And despite the objection's general  
15 denials of the motion's factual allegations, mostly  
16 for alleged lack of information, the objection is  
17 neither verified nor otherwise supported by any facts  
18 or documents.

19 Auntie Tut has demonstrated its colorable  
20 claim and even Mr. Darger and Mr. Lopez seem to admit  
21 that Auntie Tut is a legitimate secured creditor by  
22 asking Mr. Sink for ongoing payment amounts despite  
23 the disputes about the amounts owed on the mortgage.

24 But this is not the proper forum for  
25 addressing those disputes. And even with in rem stay

1 relief, any appropriate party in interest, whether  
2 that's Mr. Darger, Mr. Lopez, or Ultimate Enterprise,  
3 can pursue any available relief in state court of  
4 competent jurisdiction. Mr. Lopez also says as much  
5 in two of the objections for arguments by proposing  
6 that the state court system is a proper forum to  
7 resolve the party's disputes. And Mr. Lopez cites to  
8 numerous decisions before the Bankruptcy Code was  
9 amended in 2005, but no adversary proceeding is  
10 required to grant the stay relief contemplated by  
11 Section 362(d)(4) which can instead be pursued by a  
12 motion as contested matter. And you can refer to  
13 Bankruptcy Rule 7001, the Advisory Committee Notes,  
14 and also the cases of *In re: Van Ness*, 399 B.R. 897,  
15 and that's from the Bankruptcy Court for the Eastern  
16 District of California in 2009.

17 I'll find, accordingly, that this Chapter 7  
18 case was filed by Mr. Lopez in bad faith. And it's  
19 part of a scheme involving multiple bankruptcy  
20 filings to at least hinder or delay creditors,  
21 including Auntie Tut. So stay relief under both  
22 Section 362(d)(1) and Section 362(d)(4)(B) will be  
23 granted as will Auntie Tut's request to waive the  
24 14-day stay --

25 MR. DARGER: Your Honor --

1 THE COURT: -- of Federal Rule 4001(a)(4) to  
2 allow the postponed January 24th foreclosure sale to  
3 go forward if no intervening action is taken at state  
4 court.

5 Auntie Tut also requested dismissal of the  
6 case under Section 707(b)(3) for bad faith filing,  
7 but that section doesn't apply in this Chapter 13  
8 case. Having said that, Section 1307(c) includes bad  
9 faith as an unlisted basis for dismissal on top of  
10 the court's authority under Local Rule 1007(1)(b) to  
11 dismiss the case sua sponte for Mr. Lopez's failure  
12 to timely file the list of creditors, and Mr. Lopez  
13 has now requested dismissal of the case as well.

14 But even assuming Mr. Lopez's absolute right  
15 to dismiss under 1307(b), that dismissal isn't  
16 required to be either immediate or unconditional.  
17 Courts have long recognized the authority at minimum  
18 under Section 349(a) of the Bankruptcy Code to impose  
19 strings on the dismissal to prevent abuse, and  
20 address bad faith conduct which the court has already  
21 found to exist.

22 Accordingly, this case will be dismissed as  
23 requested by both Mr. Lopez and Auntie Tut, but the  
24 dismissal will not be entered until after entry of  
25 the stay of relief order.

1                   So Mr. Sink, I'm going to ask you to prepare  
2                   the order granting relief from stay under Section  
3                   362(d)(1) and (d)(4). And once that has been  
4                   entered, the court will enter its own motion  
5                   dismissing the case.

6                   MR. SINK: Understood, Your Honor. Thank  
7                   you. I would make one correction to the record that  
8                   you just read in. You referred to the immediate case  
9                   as a Chapter 7 case and I would just say that it was  
10                  a Chapter 13 case not the Chapter 7.

11                  THE COURT: Thank you. Anything else?

12                  MR. SINK: Thank you, Your Honor. I'll  
13                  prepare that order and I'll upload it. Do you want  
14                  me to circulate that order to the e-mail that I have  
15                  for Mr. Lopez?

16                  THE COURT: He hasn't appeared here today  
17                  and I'll be sure to review the order so that it  
18                  correctly reflects my ruling.

19                  MR. SINK: Okay. Thank you, Your Honor,  
20                  I'll get that submitted in the next day or two.

21                  THE COURT: All right. Thank you. The  
22                  court's in recess.

23                  MR. DARGER: Your Honor, so you did grant my  
24                  order to intervene, correct?

25                  THE COURT: I'm sorry, who is speaking?



1 MR. DARGER: This is John Darger.

2 THE COURT: Mr. Darger, I haven't seen any  
3 motion.

4 THE CLERK: They were filed with the court  
5 at 2:03 p.m. They're not on the docket but in user  
6 file sharing.

7 THE COURT: The court's in recess. Thank  
8 you.

9 (Hearing concluded.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATION

I hereby certify that the foregoing transcript was taken from a tape recording stenographically to the best of my ability to hear and understand said tape recording, that my said stenographic notes were thereafter transcribed into typewriting at my direction.

Dated this 14th day of February, 2025.

\_\_\_\_\_*Laura W. Robinson*\_\_\_\_\_

Laura W. Robinson